

APPENDIX D
SUPPLEMENT TO FEASIBILITY REPORT



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
California Desert District Office
6221 Box Springs Boulevard
Riverside, CA 92507-0714



SEP 25 2001

IN REPLY REFER TO:
2200
(CA-063.51)

Memorandum

TO: State Director

FROM: District Manager, California Desert

SUBJECT: Supplement to Feasibility Report for Exchange with the Agua Caliente Band of Cahuilla Indians.

The following information and corrections are provided in response to comments from your staff.

1. NEED FOR A MULTIPLE TRANSACTION ASSEMBLED LAND EXCHANGE

The federal lands consist of approximately 11 separate parcels with an estimated value in excess of \$2 million dollars. Since the Agua Caliente will be acquiring private lands to convey to the U.S., but do not currently own any lands, the number and timing of each exchange transaction will depend on the value of the private lands the Agua Caliente acquire for exchange purposes.

We anticipate needing to complete at least three exchange transactions in order to transfer all of the federal lands to the Agua Caliente. While we will attempt to complete all three transactions within three years, this will depend on the Agua Caliente successfully acquiring lands for exchange.

Since the value of each transaction is unknown at this time, we wish to have the flexibility of a ledger account to carry forward any imbalances in value. Since there are multiple parcels of federal lands, we expect to be able to keep each transaction relatively close in value. Because the Agua Caliente are financially self sufficient, we do not believe it is necessary to secure minor ledger imbalances in favor of the U.S., although we would expect to secure an imbalance over \$200,000.

We understand that once we complete the initial transaction, we will need to balance and close any ledger established for this assembled exchange within three years. If, after three years we balance and close the ledger, but there are remaining federal lands which the Agua Caliente wish to acquire, we expect to continue processing the exchange without further approval until all federal lands have been conveyed. If a new ledger is necessary, we would request separate approval for a new ledger.

2. JUSTIFICATION FOR COMPENSATION OF COSTS.

The regulations at 43 CFR 2201.3(b) give the authorized officer discretionary authority to compensate the non-federal party incurring costs normally borne by the U.S., when it is clearly in the public interest and 1.) the costs are reasonable, 2.) the exchange is a high priority, 3.) the land exchange must be expedited to protect congressionally designated areas, 4.) cash equalization funds are available, and 5.) there are no other practical means to meet federal processing costs.

The proposed exchange is clearly in the public interest because it will consolidate federal ownership of lands in the National Monument, allowing the U.S. to better manage the federal lands to protect wildlife habitat and enhance recreational opportunities. Since we expect the BLM will not have sufficient funds to cover federal processing costs, the public interest would be served if the Agua Caliente assume some of the federal processing costs.

We understand that prior to compensating the Agua Caliente for any federal exchange processing costs, we must make a separate determination that the costs are reasonable and accurate.

Because the National Monument legislation provides specific direction authorizing this exchange and directs the Secretary to make a special effort to consult with the Agua Caliente in the management of the Monument, we feel the exchange is clearly a high agency priority. The exchange must also be expedited to protect a Congressionally designated area and to protect habitat for the endangered Bighorn sheep in the Peninsular range.

Cash equalization funds are currently available, although there is no guarantee these funds will be available when the first exchange transaction is completed. Rather than using cash equalization funds for compensation, we would hope to convey additional federal lands as compensation for costs.

We anticipate that BLM will not have adequate staff or funding to complete the following reports on the federal lands; mineral potential reports, appraisal reports, cultural resource inventories and biological reports. In order to complete these reports in a timely manner, it is likely the Agua Caliente will need to assume the costs of preparing at least some of these reports.

3. ESTIMATED COSTS OF EXCHANGE PROCESSING STEPS

We have listed below the approximate costs of the steps in the exchange process. We have not estimated the cost of cultural resource and biological surveys as there is considerable uncertainty regarding the extent of necessary surveys.

The Agua Caliente have agreed to manage the federal lands they receive to preserve their biological, cultural, recreational and scientific values. Although BLM would normally complete 100% Class III cultural resource surveys of federal lands to be exchanged, in light of commitments made by the Agua Caliente, we hope to consult with the California State Historic Preservation Officer on a reduced level of inventory. We intend to pursue similar discussions with the U.S. Fish and Wildlife Service on the information needed to complete consultation under section 7 of the Endangered Species Act.

BLM costs:

1. Preparing and publishing the Notice of Exchange Proposal (NOEP). (\$2,500)
2. Adjudicating the public land records for mining claims, withdrawals, classifications, authorizations, trespasses; and taking actions, when feasible, to allow disposal of the public lands. (\$10,000)
3. Consulting with U.S. Fish & Wildlife Service and the California Department of Fish & Game regarding the exchange of lands. (\$2,000)
4. Completing determinations regarding historic properties on the federal lands and, if necessary consulting with the State Historic Preservation Officer. (Unknown)
5. Preparing the NEPA document for the land exchange. (\$4,000)
6. Preparing and publishing the Notice of Decision (NOD). (\$2,000)
7. Drafting escrow instructions and all documents of conveyances. (\$3,000)

Agua Caliente costs:

1. Providing title evidence for the non-Federal lands. (\$3,000)
2. Appraisals of the Federal and non-Federal lands. (\$50,000)
3. Providing reports of the Federal lands:
 - a. Mineral potential (\$10,000)
 - b. Cultural resources (unknown)
 - c. Biological resources (unknown)

4. MODIFYING THE AGREEMENT TO INITIATE A LAND EXCHANGE (ATI)

Prior to submitting this feasibility report, the draft ATI was developed in consultation with Agua Caliente and underwent multiple reviews by the tribal attorney. We are aware that we will need to modify the ATI to further clarify certain terms, particularly with regard to scheduling of appraisal reports.

In order to develop a realistic processing schedule and estimate certain processing costs, we feel it is essential to have some initial discussions with the Fish & Wildlife Service and the State Historic Preservation Officer on the biological and cultural resource inventories needed for the exchange. We wish to postpone further modifications to the ATI until after these discussions have occurred and the Agua Caliente have purchased, or signed an option to purchase, the lands in the first transaction.

Once these uncertainties have been resolved, we expect to develop a detailed processing schedule in consultation with the Agua Caliente and address other items of concern in the ATI.

5. MODIFICATION OF THE LEGAL DESCRIPTION AND CHANGES TO THE NOEP

In response to cadastral survey review, we have modified the legal description in the feasibility report, NOEP, and the ATI. The NOEP has been modified to reflect that this will be an assembled land exchange which may occur in several phases.



EXHIBIT A
FEDERAL LANDS PROPOSED FOR EXCHANGE

- T.4S., R.4E., section 16, all (public domain)
section 18, W1/2NE1/4, N1/2NE1/4SW1/4, S1/2 of Lot1, N1/2 of lot2 (Acquired with LWCF in 1993 & 1994 for \$58,800)
section 36, lots 1-4, W1/2NE1/4, W1/2SE1/4, E1/2SW1/4, SE1/4NW1/4, N1/2SW1/4SW1/4, E1/2NW1/4SW1/4, SW1/4NW1/4SW1/4, S1/2NW1/4NW1/4SW1/4, (public domain),
- T.5S., R.4E., section 5, lots 1-4, S1/2NE1/4, S1/2NW1/4, S1/2, (Acquired with LWCF in 1992 for \$123,000)
section 16, (Public domain)
sections, 21, 27, & 29, all (Acquired by exchange)
section 32, all (Acquired with LWCF in 1996 for \$230,000)
section 36, (Public domain)

Total of approximately 5,783.07 acres

Note: the Master Title Plat (MTP), and Palm Springs Desert Access Guide (DAG) provide conflicting status information in this township. The DAG indicates sections 33 and 35 are National Forest lands, while the MTP and HI show these lands were part of a railroad grant patent in 1906. We have confirmed that these lands were acquired by the Forest Service using LWCF appropriations, but not noted to the HI or the MTP.

EXHIBIT B
NON - FEDERAL LANDS

T.5S., R.5E., section 7, (valued in 1992 at \$982,000)
section 19, (valued in 1992 at \$492,000)
section 20, W1/2W1/2 (valued in 1992 at \$120,000)

Notice of Exchange Proposal Involving Lands in Riverside County, California, CACA 42965.

U.S. DEPARTMENT OF INTERIOR, Bureau of Land Management, Palm Springs- South Coast Field Office, 690 West Garnet Avenue, North Palm Springs, CA 92258-1260

Notice is hereby given that the Bureau of Land Management (BLM) is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange would transfer all or portions of the following described public lands to the Agua Caliente Band of Cahuilla Indians:

San Bernardino Meridian, California

T.4S., R.4E., section 16, all
section 18, W1/2NE1/4, N1/2NE1/4SW1/4, S1/2 of Lot1, N1/2 of lot2,
section 36, lots 1-4, W1/2NE1/4, W1/2SE1/4, E1/2SW1/4, SE1/4NW1/4,
N1/2SW1/4SW1/4, E1/2NW1/4SW1/4, SW1/4NW1/4SW1/4,
S1/2NW1/4NW1/4SW1/4,

T.5S., R.4E., section 5, lots 1-4, S1/2NE1/4, S1/2NW1/4, S1/2,
sections 16, 21, 27, & 29, 32, & 36.

In exchange, the United States would acquire all or portions of the following described land from the Agua Caliente Band of Cahuilla Indians:

San Bernardino Meridian, California

T.5S., R. 5E., sections 7, 19 and the W1/2W1/2 of section 20.

The purpose of the exchange is to consolidate the ownership of federal lands within the Santa Rosa and San Jacinto National Monument and to transfer certain federal lands in the National Monument to the Agua Caliente Band of Cahuilla Indians. In completing this exchange, the BLM and the Agua Caliente may complete a series of exchange transactions. More detailed information concerning the proposed exchange may be obtained from Tom Gey, California Desert District Office, 6221 Box Springs Blvd., Riverside, California 92507.

The federal lands identified in this proposal were withdrawn from all forms of appropriation under the public land laws and mining laws under public law 106-351 dated October 24, 2000.

Interested parties are invited to submit comments concerning the proposed exchange and provide notice of any liens, encumbrances or claims on the lands involved, to Jim Kenna, Field Manager, Palm Springs- South Coast Field Office, 690 West Garnet Avenue, P.O. Box 1260, North Palm Springs, California 92258-1260. Where appropriate, comments should reference the specific parcels involved. In order to be considered in the environmental analysis of the proposed exchange, comments must be submitted in writing and be post marked or received within forty-five (45) days of the initial publication of this notice.

James G. Kenna
Field Manager

Date

This page is intentionally blank.